

AMENDED IN SENATE SEPTEMBER 4, 2015

AMENDED IN SENATE AUGUST 31, 2015

AMENDED IN SENATE JULY 16, 2015

AMENDED IN SENATE JUNE 29, 2015

AMENDED IN ASSEMBLY APRIL 30, 2015

AMENDED IN ASSEMBLY APRIL 15, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1492**

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**Introduced by Assembly Member Gatto  
(Coauthor: Assembly Member Atkins)**

February 27, 2015

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An act to amend and add Sections ~~296, 298~~, 298 and 299 of the Penal Code, relating to DNA samples.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1492, as amended, Gatto. Forensic testing: DNA samples.

(1) Existing law, as amended by the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, Proposition 69, approved by the voters at the November 2, 2004, general election (the DNA Act) requires any adult person who is arrested or charged with any felony offense to provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required for law enforcement identification analysis. Existing law requires that blood specimens and buccal swab samples be

forwarded promptly to the Department of Justice for analysis. Existing case law, *People v. Buza* (2014) 231 Cal.App.4th 1446, for which review has been granted by the California Supreme Court, holds that the DNA Act, to the extent it requires felony arrestees to submit to a DNA sample for law enforcement analysis and inclusion in the state and federal DNA databases, without independent suspicion, a warrant, or a judicial or grand jury determination of probable cause, unreasonably intrudes on the arrestee's expectation of privacy and is invalid under the California Constitution. The DNA Act provides that it may be amended by a statute passed by each house of the Legislature that furthers the purpose of the measure.

This bill would state that it is the intention of the Legislature to further the purposes of the DNA Act in light of the above-specified case law. ~~The bill would, if the California Supreme Court rules to uphold *People v. Buza*, limit the above-specified requirements to persons arrested for specified sex offenses or serious or violent felonies.~~ The bill would, if the California Supreme Court rules to uphold *People v. Buza*, require that a blood specimen or buccal swab sample taken from a person arrested for the commission of a felony be forwarded to the department after a felony arrest warrant has been signed by a judicial officer, a grand jury indictment has been found and issued, or a judicial determination of probable cause to believe the person has committed the offense for which he or she was arrested has been ~~made at the time the defendant has been arraigned.~~ *made*.

(2) Existing law, as amended by the DNA Act, requires that a DNA specimen and sample be destroyed and that a searchable database profile be expunged from that databank program if the person from whom the specimen or sample was collected has no past or present offense or pending charge which qualifies that person for inclusion in the database and if that person submits an application, as specified. Existing law gives the court discretion to grant or deny the application.

This bill would, if the California Supreme Court rules to uphold *People v. Buza*, require the DNA specimen and sample to be destroyed and the searchable database profile expunged from the database without the requirement of an application.

~~(3) Existing law, as amended by the DNA Act, states that its provisions do not prohibit collection and analysis of specimens, samples, or print impressions as a condition of a plea for an offense that does not require the taking of samples and specimens.~~

~~The bill would state that it is the intent of the Legislature that if buccal swab samples are taken for DNA analysis as a condition of a plea or reduction or dismissal of charges, that all uses of the DNA sample be disclosed to the defendant in writing, that consent be obtained in writing, that the defendant sign a written agreement allowing his or her buccal swab sample or blood sample to be taken for DNA analysis, and that the defendant have an opportunity to consult with counsel prior to signing the agreement.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. It is the intent of the Legislature to limit the  
2     analysis of buccal swab samples and blood samples taken from  
3     felony arrestees for purposes of DNA analysis only to the extent  
4     required by the decision in *People v. Buza*, and to further the  
5     purposes of the DNA Fingerprint, Unsolved Crime and Innocence  
6     Protection Act, Proposition 69, approved by the voters at the  
7     November 2, 2004, statewide general election, in light of that  
8     decision.

9     ~~SEC. 2. It is the intent of the Legislature that if buccal swab~~  
10    ~~samples are taken for DNA analysis as a condition of a plea or~~  
11    ~~reduction or dismissal of charges, that all uses of the DNA sample~~  
12    ~~shall first be disclosed to the defendant in writing, that consent~~  
13    ~~shall be obtained in writing, that the defendant shall sign a written~~  
14    ~~agreement allowing his or her buccal swab sample or blood sample~~  
15    ~~to be taken for DNA analysis, and that the defendant shall have~~  
16    ~~an opportunity to consult with his or her legal counsel prior to~~  
17    ~~signing the agreement. It is the intent of the Legislature that buccal~~  
18    ~~swab samples taken as a condition of a plea or reduction or~~  
19    ~~dismissal of charges be done on the basis of individualized~~  
20    ~~consideration.~~

21    ~~SEC. 3. Section 296 of the Penal Code is amended to read:~~

22    ~~296. (a) The following persons shall provide buccal swab~~  
23    ~~samples, right thumbprints, and a full palm print impression of~~  
24    ~~each hand, and any blood specimens or other biological samples~~  
25    ~~required pursuant to this chapter for law enforcement identification~~  
26    ~~analysis:~~

1     ~~(1) Any person, including any juvenile, who is convicted of or~~  
2     ~~pleads guilty or no contest to any felony offense, or is found not~~  
3     ~~guilty by reason of insanity of any felony offense, or any juvenile~~  
4     ~~who is adjudicated under Section 602 of the Welfare and~~  
5     ~~Institutions Code for committing any felony offense.~~

6     ~~(2) Any adult person who is arrested for or charged with any of~~  
7     ~~the following felony offenses:~~

8     ~~(A) Any felony offense specified in Section 290 or attempt to~~  
9     ~~commit any felony offense described in Section 290, or any felony~~  
10    ~~offense that imposes upon a person the duty to register in California~~  
11    ~~as a sex offender under Section 290.~~

12    ~~(B) Murder or voluntary manslaughter or any attempt to commit~~  
13    ~~murder or voluntary manslaughter.~~

14    ~~(C) Commencing on January 1, 2009, any adult person arrested~~  
15    ~~or charged with any felony offense.~~

16    ~~(3) Any person, including any juvenile, who is required to~~  
17    ~~register under Section 290 or 457.1 because of the commission of,~~  
18    ~~or the attempt to commit, a felony or misdemeanor offense, or any~~  
19    ~~person, including any juvenile, who is housed in a mental health~~  
20    ~~facility or sex offender treatment program after referral to such~~  
21    ~~facility or program by a court after being charged with any felony~~  
22    ~~offense.~~

23    ~~(4) The term “felony” as used in this subdivision includes an~~  
24    ~~attempt to commit the offense.~~

25    ~~(5) This chapter does not prohibit collection and analysis of~~  
26    ~~specimens, samples, or print impressions as a condition of a plea~~  
27    ~~for a nonqualifying offense.~~

28    ~~(b) The provisions of this chapter and its requirements for~~  
29    ~~submission of specimens, samples, and print impressions as soon~~  
30    ~~as administratively practicable shall apply to all qualifying persons~~  
31    ~~regardless of sentence imposed, including a sentence of death, life~~  
32    ~~without the possibility of parole, or a life or indeterminate term,~~  
33    ~~or other disposition rendered in the case of an adult or juvenile~~  
34    ~~tried as an adult, or whether the person is diverted, fined, or referred~~  
35    ~~for evaluation, and regardless of disposition rendered or placement~~  
36    ~~made in the case of a juvenile who is found to have committed~~  
37    ~~any felony offense or is adjudicated under Section 602 of the~~  
38    ~~Welfare and Institutions Code.~~

39    ~~(c) The provisions of this chapter and its requirements for~~  
40    ~~submission of specimens, samples, and print impressions as soon~~

1 as administratively practicable by qualified persons as described  
2 in subdivision (a) shall apply regardless of placement or  
3 confinement in any mental hospital or other public or private  
4 treatment facility, and shall include, but not be limited to, the  
5 following persons, including juveniles:

6 (1) Any person committed to a state hospital or other treatment  
7 facility as a mentally disordered sex offender under former Article  
8 1 (commencing with Section 6300) of Chapter 2 of Part 2 of  
9 Division 6 of the Welfare and Institutions Code.

10 (2) Any person who has a severe mental disorder as set forth  
11 within the provisions of Article 4 (commencing with Section 2960)  
12 of Chapter 7 of Title 1 of Part 3 of the Penal Code.

13 (3) Any person found to be a sexually violent predator pursuant  
14 to Article 4 (commencing with Section 6600) of Chapter 2 of Part  
15 2 of Division 6 of the Welfare and Institutions Code.

16 (d) The provisions of this chapter are mandatory and apply  
17 whether or not the court advises a person, including any juvenile,  
18 that he or she must provide the databank and database specimens,  
19 samples, and print impressions as a condition of probation, parole,  
20 or any plea of guilty, no contest, or not guilty by reason of insanity,  
21 or any admission to any of the offenses described in subdivision  
22 (a).

23 (e) If at any stage of court proceedings the prosecuting attorney  
24 determines that specimens, samples, and print impressions required  
25 by this chapter have not already been taken from any person, as  
26 defined under subdivision (a) of Section 296, the prosecuting  
27 attorney shall notify the court orally on the record, or in writing,  
28 and request that the court order collection of the specimens,  
29 samples, and print impressions required by law. However, a failure  
30 by the prosecuting attorney or any other law enforcement agency  
31 to notify the court shall not relieve a person of the obligation to  
32 provide specimens, samples, and print impressions pursuant to this  
33 chapter.

34 (f) Prior to final disposition or sentencing in the case, the court  
35 shall inquire and verify that the specimens, samples, and print  
36 impressions required by this chapter have been obtained and that  
37 this fact is included in the abstract of judgment or dispositional  
38 order in the case of a juvenile. The abstract of judgment issued by  
39 the court shall indicate that the court has ordered the person to  
40 comply with the requirements of this chapter and that the person

1 shall be included in the state's DNA and Forensic Identification  
2 Database and Databank Program and be subject to this chapter.

3 However, failure by the court to verify specimen, sample, and  
4 print impression collection or enter these facts in the abstract of  
5 judgment or dispositional order in the case of a juvenile shall not  
6 invalidate an arrest, plea, conviction, or disposition, or otherwise  
7 relieve a person from the requirements of this chapter.

8 (g) ~~This section shall become inoperative if the California~~  
9 ~~Supreme Court rules to uphold the California Court of Appeal~~  
10 ~~decision in People v. Buza (2014) 231 Cal.App.4th 1446 in regard~~  
11 ~~to the provisions of Section 296 of the Penal Code, as amended~~  
12 ~~by Section 3 of the DNA Fingerprint, Unsolved Crime and~~  
13 ~~Innocence Protection Act, Proposition 69, approved by the voters~~  
14 ~~at the November 2, 2004, general election, in which case this~~  
15 ~~section shall become inoperative immediately upon that ruling~~  
16 ~~becoming final.~~

17 SEC. 4. Section 296 is added to the Penal Code, to read:

18 296. (a) ~~The following persons shall provide buccal swab~~  
19 ~~samples, right thumbprints, and a full palm print impression of~~  
20 ~~each hand, and any blood specimens or other biological samples~~  
21 ~~required pursuant to this chapter for law enforcement identification~~  
22 ~~analysis:~~

23 (1) ~~Any person, including any juvenile, who is convicted of or~~  
24 ~~pleads guilty or no contest to any felony offense, or is found not~~  
25 ~~guilty by reason of insanity of any felony offense, or any juvenile~~  
26 ~~who is adjudicated under Section 602 of the Welfare and~~  
27 ~~Institutions Code for committing any felony offense.~~

28 (2) ~~Any adult person who is arrested for or charged with any of~~  
29 ~~the following felony offenses:~~

30 (A) ~~Any felony offense specified in Section 290 or attempt to~~  
31 ~~commit any felony offense described in Section 290, or any felony~~  
32 ~~offense that imposes upon a person the duty to register in California~~  
33 ~~as a sex offender under Section 290.~~

34 (B) ~~Murder or voluntary manslaughter or any attempt to commit~~  
35 ~~murder or voluntary manslaughter.~~

36 (C) ~~Any adult person arrested or charged with a felony offense~~  
37 ~~specified in subdivision (c) of Section 667.5 or subdivision (c) of~~  
38 ~~Section 1192.7.~~

39 (3) ~~Any person, including any juvenile, who is required to~~  
40 ~~register under Section 290 or 457.1 because of the commission of,~~

1 or the attempt to commit, a felony or misdemeanor offense, or any  
2 person, including any juvenile, who is housed in a mental health  
3 facility or sex offender treatment program after referral to such  
4 facility or program by a court after being charged with any felony  
5 offense.

6 (4) The term “felony” as used in this subdivision includes an  
7 attempt to commit the offense.

8 (5) This chapter does not prohibit collection and analysis of  
9 specimens, samples, or print impressions as a condition of a plea  
10 for a nonqualifying offense.

11 (b) The provisions of this chapter and its requirements for  
12 submission of specimens, samples, and print impressions as soon  
13 as administratively practicable shall apply to all qualifying persons  
14 regardless of sentence imposed, including a sentence of death, life  
15 without the possibility of parole, or a life or indeterminate term,  
16 or other disposition rendered in the case of an adult or juvenile  
17 tried as an adult, or whether the person is diverted, fined, or referred  
18 for evaluation, and regardless of disposition rendered or placement  
19 made in the case of juvenile who is found to have committed any  
20 felony offense or is adjudicated under Section 602 of the Welfare  
21 and Institutions Code.

22 (c) The provisions of this chapter and its requirements for  
23 submission of specimens, samples, and print impressions as soon  
24 as administratively practicable by qualified persons as described  
25 in subdivision (a) shall apply regardless of placement or  
26 confinement in any mental hospital or other public or private  
27 treatment facility, and shall include, but not be limited to, the  
28 following persons, including juveniles:

29 (1) Any person committed to a state hospital or other treatment  
30 facility as a mentally disordered sex offender under former Article  
31 1 (commencing with Section 6300) of Chapter 2 of Part 2 of  
32 Division 6 of the Welfare and Institutions Code.

33 (2) Any person who has a severe mental disorder as set forth  
34 within the provisions of Article 4 (commencing with Section 2960)  
35 of Chapter 7 of Title 1 of Part 3 of the Penal Code.

36 (3) Any person found to be a sexually violent predator pursuant  
37 to Article 4 (commencing with Section 6600) of Chapter 2 of Part  
38 2 of Division 6 of the Welfare and Institutions Code.

39 (d) The provisions of this chapter are mandatory and apply  
40 whether or not the court advises a person, including any juvenile,

1 that he or she must provide the data bank and database specimens,  
2 samples, and print impressions as a condition of probation, parole,  
3 or any plea of guilty, no contest, or not guilty by reason of insanity,  
4 or any admission to any of the offenses described in subdivision  
5 (a).

6 (e) ~~If at any stage of court proceedings the prosecuting attorney~~  
7 ~~determines that specimens, samples, and print impressions required~~  
8 ~~by this chapter have not already been taken from any person, as~~  
9 ~~defined under subdivision (a) of Section 296, the prosecuting~~  
10 ~~attorney shall notify the court orally on the record, or in writing,~~  
11 ~~and request that the court order collection of the specimens,~~  
12 ~~samples, and print impressions required by law. However, a failure~~  
13 ~~by the prosecuting attorney or any other law enforcement agency~~  
14 ~~to notify the court shall not relieve a person of the obligation to~~  
15 ~~provide specimens, samples, and print impressions pursuant to this~~  
16 ~~chapter.~~

17 (f) ~~Prior to final disposition or sentencing in the case, the court~~  
18 ~~shall inquire and verify that the specimens, samples, and print~~  
19 ~~impressions required by this chapter have been obtained and that~~  
20 ~~this fact is included in the abstract of judgment or dispositional~~  
21 ~~order in the case of a juvenile. The abstract of judgment issued by~~  
22 ~~the court shall indicate that the court has ordered the person to~~  
23 ~~comply with the requirements of this chapter and that the person~~  
24 ~~shall be included in the state's DNA and Forensic Identification~~  
25 ~~Database and Databank Program and be subject to this chapter.~~

26 ~~However, failure by the court to verify specimen, sample, and~~  
27 ~~print impression collection or enter these facts in the abstract of~~  
28 ~~judgment or dispositional order in the case of a juvenile shall not~~  
29 ~~invalidate an arrest, plea, conviction, or disposition, or otherwise~~  
30 ~~relieve a person from the requirements of this chapter.~~

31 (g) ~~This section shall only become operative if the California~~  
32 ~~Supreme Court rules to uphold the California Court of Appeal~~  
33 ~~decision in People v. Buza (2014) 231 Cal.App.4th 1446 in regard~~  
34 ~~to the provisions of Section 296 of the Penal Code, as amended~~  
35 ~~by Section 3 of the DNA Fingerprint, Unsolved Crime and~~  
36 ~~Innocence Protection Act, Proposition 69, approved by the voters~~  
37 ~~at the November 2, 2004, general election, in which case this~~  
38 ~~section shall become operative immediately upon that ruling~~  
39 ~~becoming final.~~



1     ~~SEC. 5.~~

2     *SEC. 2.* Section 298 of the Penal Code is amended to read:

3     298. (a) The Secretary of the Department of Corrections and  
4     Rehabilitation, or the Chief Administrative Officer of the detention  
5     facility, jail, or other facility at which the blood specimens, buccal  
6     swab samples, and thumb and palm print impressions were  
7     collected shall cause these specimens, samples, and print  
8     impressions to be forwarded promptly to the Department of Justice.  
9     The specimens, samples, and print impressions shall be collected  
10    by a person using a Department of Justice approved collection kit  
11    and in accordance with the requirements and procedures set forth  
12    in subdivision (b).

13    (b) (1) The Department of Justice shall provide all blood  
14    specimen vials, buccal swab collectors, mailing tubes, labels, and  
15    instructions for the collection of the blood specimens, buccal swab  
16    samples, and thumbprints. The specimens, samples, and  
17    thumbprints shall thereafter be forwarded to the DNA Laboratory  
18    of the Department of Justice for analysis of DNA and other forensic  
19    identification markers.

20    Additionally, the Department of Justice shall provide all full  
21    palm print cards, mailing envelopes, and instructions for the  
22    collection of full palm prints. The full palm prints, on a form  
23    prescribed by the Department of Justice, shall thereafter be  
24    forwarded to the Department of Justice for maintenance in a file  
25    for identification purposes.

26    (2) The withdrawal of blood shall be performed in a medically  
27    approved manner. Only health care providers trained and certified  
28    to draw blood may withdraw the blood specimens for purposes of  
29    this section.

30    (3) Buccal swab samples may be procured by law enforcement  
31    or corrections personnel or other individuals trained to assist in  
32    buccal swab collection.

33    (4) Right thumbprints and a full palm print impression of each  
34    hand shall be taken on forms prescribed by the Department of  
35    Justice. The palm print forms shall be forwarded to and maintained  
36    by the Bureau of Criminal Identification and Information of the  
37    Department of Justice. Right thumbprints also shall be taken at  
38    the time of the collection of samples and specimens and shall be  
39    placed on the sample and specimen containers and forms as  
40    directed by the Department of Justice. The samples, specimens,

1 and forms shall be forwarded to and maintained by the DNA  
2 Laboratory of the Department of Justice.

3 (5) The law enforcement or custodial agency collecting  
4 specimens, samples, or print impressions is responsible for  
5 confirming that the person qualifies for entry into the Department  
6 of Justice DNA Database and Databank Program prior to collecting  
7 the specimens, samples, or print impressions pursuant to this  
8 chapter.

9 (6) The DNA Laboratory of the Department of Justice is  
10 responsible for establishing procedures for entering databank and  
11 database information.

12 (c) (1) Persons authorized to draw blood or obtain samples or  
13 print impressions under this chapter for the databank or database  
14 shall not be civilly or criminally liable either for withdrawing blood  
15 when done in accordance with medically accepted procedures, or  
16 for obtaining buccal swab samples by scraping inner cheek cells  
17 of the mouth, or thumb or palm print impressions when performed  
18 in accordance with standard professional practices.

19 (2) There is no civil or criminal cause of action against any law  
20 enforcement agency or the Department of Justice, or any employee  
21 thereof, for a mistake in confirming a person's or sample's  
22 qualifying status for inclusion within the database or databank or  
23 in placing an entry in a databank or a database.

24 (3) The failure of the Department of Justice or local law  
25 enforcement to comply with Article 4 or any other provision of  
26 this chapter shall not invalidate an arrest, plea, conviction, or  
27 disposition.

28 (d) This section shall become inoperative if the California  
29 Supreme Court rules to uphold the California Court of Appeal  
30 decision in *People v. Buza* (2014) 231 Cal.App.4th 1446 in regard  
31 to the provisions of Section 298 of the Penal Code, as amended  
32 by Section 6 of the DNA Fingerprint, Unsolved Crime and  
33 Innocence Protection Act, Proposition 69, approved by the voters  
34 at the November 2, 2004, statewide general election, in which case  
35 this section shall become inoperative immediately upon that ruling  
36 becoming final.

37 ~~SEC. 6.~~

38 *SEC. 3.* Section 298 is added to the Penal Code, to read:

39 298. (a) (1) (A) The Secretary of the Department of  
40 Corrections and Rehabilitation, or the Chief Administrative Officer

1 of the detention facility, jail, or other facility at which the blood  
2 specimens, buccal swab samples, and thumb and palm print  
3 impressions were collected shall cause these specimens, samples,  
4 and print impressions to be forwarded promptly to the Department  
5 of Justice, except that a blood specimen or buccal swab sample  
6 taken from a person arrested for the commission of a felony as  
7 specified in paragraph (2) of subdivision (a) of Section 296 shall  
8 be forwarded to the Department of Justice only after one of the  
9 following has occurred, which shall be deemed a finding of  
10 probable cause, whichever occurs first:

11 (i) A felony arrest warrant has been signed by a judicial officer  
12 pursuant to Section 813 or 817.

13 (ii) A grand jury indictment has been found and issued pursuant  
14 to ~~Sections~~ Section 939.8, 940, or 944.

15 (iii) A judicial officer has determined that probable cause exists  
16 to believe the person has committed the offense for which he or  
17 she was ~~arrested at the time the defendant has been arraigned.~~  
18 *arrested.*

19 (B) The specimens, samples, and print impressions shall be  
20 collected by a person using a Department of Justice approved  
21 collection kit and in accordance with the requirements and  
22 procedures set forth in subdivision (b).

23 (2) A blood specimen or buccal swab sample taken from a  
24 person arrested for the commission of a felony as specified in  
25 paragraph (2) of subdivision (a) of Section 296 that has not been  
26 forwarded to the Department of Justice within six months following  
27 the arrest of that person because the agency that took the blood  
28 specimen or buccal swab sample has not received notice to forward  
29 the DNA specimen or sample to the Department of Justice for  
30 inclusion in the state's DNA and Forensic Identification Database  
31 and Databank Program pursuant to paragraph (1) following a  
32 determination of probable cause, shall be destroyed by the agency  
33 that collected the blood specimen or buccal swab sample.

34 (b) (1) The Department of Justice shall provide all blood  
35 specimen vials, buccal swab collectors, mailing tubes, labels, and  
36 instructions for the collection of the blood specimens, buccal swab  
37 samples, and thumbprints. The specimens, samples, and  
38 thumbprints shall thereafter be forwarded to the DNA Laboratory  
39 of the Department of Justice for analysis of DNA and other forensic  
40 identification markers.

1     Additionally, the Department of Justice shall provide all full  
2     palm print cards, mailing envelopes, and instructions for the  
3     collection of full palm prints. The full palm prints, on a form  
4     prescribed by the Department of Justice, shall thereafter be  
5     forwarded to the Department of Justice for maintenance in a file  
6     for identification purposes.

7     (2) The withdrawal of blood shall be performed in a medically  
8     approved manner. Only health care providers trained and certified  
9     to draw blood may withdraw the blood specimens for purposes of  
10    this section.

11    (3) Buccal swab samples may be procured by law enforcement  
12    or corrections personnel or other individuals trained to assist in  
13    buccal swab collection.

14    (4) Right thumbprints and a full palm print impression of each  
15    hand shall be taken on forms prescribed by the Department of  
16    Justice. The palm print forms shall be forwarded to and maintained  
17    by the Bureau of Criminal Identification and Information of the  
18    Department of Justice. Right thumbprints also shall be taken at  
19    the time of the collection of samples and specimens and shall be  
20    placed on the sample and specimen containers and forms as  
21    directed by the Department of Justice. The samples, specimens,  
22    and forms shall be forwarded to and maintained by the DNA  
23    Laboratory of the Department of Justice.

24    (5) The law enforcement or custodial agency collecting  
25    specimens, samples, or print impressions is responsible for  
26    confirming that the person qualifies for entry into the Department  
27    of Justice DNA and Forensic Identification Database and Databank  
28    Program prior to collecting the specimens, samples, or print  
29    impressions pursuant to this chapter.

30    (6) The DNA Laboratory of the Department of Justice is  
31    responsible for establishing procedures for entering databank and  
32    database information.

33    (c) (1) Persons authorized to draw blood or obtain samples or  
34    print impressions under this chapter for the databank or database  
35    shall not be civilly or criminally liable either for withdrawing blood  
36    when done in accordance with medically accepted procedures, or  
37    for obtaining buccal swab samples by scraping inner cheek cells  
38    of the mouth, or thumb or palm print impressions when performed  
39    in accordance with standard professional practices.

1 (2) There is no civil or criminal cause of action against any law  
2 enforcement agency or the Department of Justice, or any employee  
3 thereof, for a mistake in confirming a person's or sample's  
4 qualifying status for inclusion within the database or databank or  
5 in placing an entry in a databank or a database.

6 (3) The failure of the Department of Justice or local law  
7 enforcement to comply with Article 4 or any other provision of  
8 this chapter shall not invalidate an arrest, plea, conviction, or  
9 disposition.

10 (d) This section shall only become operative if the California  
11 Supreme Court rules to uphold the California Court of Appeal  
12 decision in *People v. Buza* (2014) 231 Cal.App.4th 1446 in regard  
13 to the provisions of Section 298 of the Penal Code, as amended  
14 by Section 6 of the DNA Fingerprint, Unsolved Crime and  
15 Innocence Protection Act, Proposition 69, approved by the voters  
16 at the November 2, 2004, statewide general election, in which case  
17 this section shall become operative immediately upon that ruling  
18 becoming final.

19 ~~SEC. 7.~~

20 *SEC. 4.* Section 299 of the Penal Code is amended to read:

21 299. (a) A person whose DNA profile has been included in  
22 the databank pursuant to this chapter shall have his or her DNA  
23 specimen and sample destroyed and searchable database profile  
24 expunged from the databank program pursuant to the procedures  
25 set forth in subdivision (b) if the person has no past or present  
26 offense or pending charge which qualifies that person for inclusion  
27 within the state's DNA and Forensic Identification Database and  
28 Databank Program and there otherwise is no legal basis for  
29 retaining the specimen or sample or searchable profile.

30 (b) Pursuant to subdivision (a), a person who has no past or  
31 present qualifying offense, and for whom there otherwise is no  
32 legal basis for retaining the specimen or sample or searchable  
33 profile, may make a written request to have his or her specimen  
34 and sample destroyed and searchable database profile expunged  
35 from the databank program if any of the following apply:

36 (1) Following arrest, no accusatory pleading has been filed  
37 within the applicable period allowed by law, charging the person  
38 with a qualifying offense as set forth in subdivision (a) of Section  
39 296 or if the charges which served as the basis for including the  
40 DNA profile in the state's DNA and Forensic Identification

1 Database and Databank Program have been dismissed prior to  
2 adjudication by a trier of fact;

3 (2) The underlying conviction or disposition serving as the basis  
4 for including the DNA profile has been reversed and the case  
5 dismissed;

6 (3) The person has been found factually innocent of the  
7 underlying offense pursuant to Section 851.8, or Section 781.5 of  
8 the Welfare and Institutions Code; or

9 (4) The defendant has been found not guilty or the defendant  
10 has been acquitted of the underlying offense.

11 (c) (1) The person requesting the databank entry to be expunged  
12 must send a copy of his or her request to the trial court of the  
13 county where the arrest occurred, or that entered the conviction or  
14 rendered disposition in the case, to the DNA Laboratory of the  
15 Department of Justice, and to the prosecuting attorney of the county  
16 in which he or she was arrested or, convicted, or adjudicated, with  
17 proof of service on all parties. The court has the discretion to grant  
18 or deny the request for expungement. The denial of a request for  
19 expungement is a nonappealable order and shall not be reviewed  
20 by petition for writ.

21 (2) Except as provided in this section, the Department of Justice  
22 shall destroy a specimen and sample and expunge the searchable  
23 DNA database profile pertaining to the person who has no present  
24 or past qualifying offense of record upon receipt of a court order  
25 that verifies the applicant has made the necessary showing at a  
26 noticed hearing, and that includes all of the following:

27 (A) The written request for expungement pursuant to this  
28 section.

29 (B) A certified copy of the court order reversing and dismissing  
30 the conviction or case, or a letter from the district attorney  
31 certifying that no accusatory pleading has been filed or the charges  
32 which served as the basis for collecting a DNA specimen and  
33 sample have been dismissed prior to adjudication by a trier of fact,  
34 the defendant has been found factually innocent, the defendant has  
35 been found not guilty, the defendant has been acquitted of the  
36 underlying offense, or the underlying conviction has been reversed  
37 and the case dismissed.

38 (C) Proof of written notice to the prosecuting attorney and the  
39 Department of Justice that expungement has been requested.

1 (D) A court order verifying that no retrial or appeal of the case  
2 is pending, that it has been at least 180 days since the defendant  
3 or minor has notified the prosecuting attorney and the Department  
4 of Justice of the expungement request, and that the court has not  
5 received an objection from the Department of Justice or the  
6 prosecuting attorney.

7 (d) Upon order from the court, the Department of Justice shall  
8 destroy any specimen or sample collected from the person and any  
9 searchable DNA database profile pertaining to the person, unless  
10 the department determines that the person is subject to the  
11 provisions of this chapter because of a past qualifying offense of  
12 record or is or has otherwise become obligated to submit a blood  
13 specimen or buccal swab sample as a result of a separate arrest,  
14 conviction, juvenile adjudication, or finding of guilty or not guilty  
15 by reason of insanity for an offense described in subdivision (a)  
16 of Section 296, or as a condition of a plea.

17 The Department of Justice is not required to destroy analytical  
18 data or other items obtained from a blood specimen or saliva, or  
19 buccal swab sample, if evidence relating to another person subject  
20 to the provisions of this chapter would thereby be destroyed or  
21 otherwise compromised.

22 Any identification, warrant, probable cause to arrest, or arrest  
23 based upon a databank or database match is not invalidated due  
24 to a failure to expunge or a delay in expunging records.

25 (e) Notwithstanding any other law, the Department of Justice  
26 DNA Laboratory is not required to expunge DNA profile or  
27 forensic identification information or destroy or return specimens,  
28 samples, or print impressions taken pursuant to this section if the  
29 duty to register under Section 290 or 457.1 is terminated.

30 (f) Notwithstanding any other law, including Sections 17,  
31 1170.18, 1203.4, and 1203.4a, a judge is not authorized to relieve  
32 a person of the separate administrative duty to provide specimens,  
33 samples, or print impressions required by this chapter if a person  
34 has been found guilty or was adjudicated a ward of the court by a  
35 trier of fact of a qualifying offense as defined in subdivision (a)  
36 of Section 296, or was found not guilty by reason of insanity or  
37 pleads no contest to a qualifying offense as defined in subdivision  
38 (a) of Section 296.

39 (g) This section shall become inoperative if the California  
40 Supreme Court rules to uphold the California Court of Appeal

1 decision in *People v. Buza* (2014) 231 Cal.App.4th 1446 in regard  
2 to the provisions of Section 299 of the Penal Code, as amended  
3 by Section 9 of the DNA Fingerprint, Unsolved Crime and  
4 Innocence Protection Act, Proposition 69, approved by the voters  
5 at the November 2, 2004, statewide general election, in which case  
6 this section shall become inoperative immediately upon that ruling  
7 becoming final.

8 ~~SEC. 8.~~

9 *SEC. 5.* Section 299 is added to the Penal Code, to read:

10 299. (a) A person whose DNA profile has been included in  
11 the databank pursuant to this chapter shall have his or her DNA  
12 specimen and sample destroyed and searchable database profile  
13 expunged from the databank program if the person has no past or  
14 present offense or pending charge which qualifies that person for  
15 inclusion within the state's DNA and Forensic Identification  
16 Database and Databank Program and there otherwise is no legal  
17 basis for retaining the specimen or sample or searchable profile.

18 (b) Pursuant to subdivision (a), a person who has no past or  
19 present qualifying offense, and for whom there otherwise is no  
20 legal basis for retaining the specimen or sample or searchable  
21 profile shall have his or her specimen and sample destroyed and  
22 searchable database profile expunged from the databank program  
23 if any of the following apply:

24 (1) Following arrest, *and after the applicable law enforcement*  
25 *agency has provided notice to the prosecuting attorney that the*  
26 *criminal case will not be presented to the prosecuting attorney for*  
27 *review, or after the applicable law enforcement agency has*  
28 *submitted a criminal case to the prosecuting attorney for review,*  
29 no accusatory pleading has been filed within the applicable period  
30 allowed by law, charging the person with a qualifying offense as  
31 set forth in subdivision (a) of Section ~~296~~ *or if the 296, in which*  
32 *case the prosecuting attorney shall immediately, or as soon as*  
33 *practically possible, submit a letter to the Department of Justice*  
34 *indicating that an accusatory pleading has not been filed.*

35 (2) *The charges which served as the basis for including the DNA*  
36 *profile in the state's DNA and Forensic Identification Database*  
37 *and Databank Program have been dismissed prior to adjudication*  
38 *by a trier of fact, in which case the district attorney shall submit a*  
39 *letter to the Department of Justice as soon as these conditions have*  
40 *been met; fact, in which case the court shall forward an order to*



1 *the Department of Justice upon disposition of the case, indicating*  
2 *that the charges have been dismissed.*

3 ~~(2)~~

4 (3) The underlying conviction or disposition serving as the basis  
5 for including the DNA profile has been reversed and the case  
6 dismissed, in which case the court shall forward its order to the  
7 Department of Justice upon disposition of the case.

8 ~~(3)~~

9 (4) The person has been found factually innocent of the  
10 underlying offense pursuant to Section 851.8, or Section 781.5 of  
11 the Welfare and Institutions Code, in which case the court shall  
12 forward its order to the Department of Justice upon disposition of  
13 the case.

14 ~~(4)~~

15 (5) The defendant has been found not guilty or the defendant  
16 has been acquitted of the underlying offense, in which case the  
17 court shall forward its order to the Department of Justice upon  
18 disposition of the case.

19 (c) Except as provided in this section, the Department of Justice  
20 shall destroy a specimen and sample and expunge the searchable  
21 DNA database profile pertaining to the person who has no present  
22 or past qualifying offense of record upon receipt of the following:

23 (1) A certified copy of the court order reversing and dismissing  
24 the conviction or case, or a letter from the district attorney  
25 certifying that no accusatory pleading has been filed or the charges  
26 which served as the basis for collecting a DNA specimen and  
27 sample have been dismissed prior to adjudication by a trier of fact,  
28 the defendant has been found factually innocent, the defendant has  
29 been found not guilty, the defendant has been acquitted of the  
30 underlying offense, or the underlying conviction has been reversed  
31 and the case dismissed.

32 (2) A court order verifying that no retrial or appeal of the case  
33 is pending.

34 (d) Pursuant to this section, the Department of Justice shall  
35 destroy any specimen or sample collected from the person and any  
36 searchable DNA database profile pertaining to the person, unless  
37 the department determines that the person is subject to the  
38 provisions of this chapter because of a past qualifying offense of  
39 record or is or has otherwise become obligated to submit a blood  
40 specimen or buccal swab sample as a result of a separate arrest,

1 conviction, juvenile adjudication, or finding of guilty or not guilty  
2 by reason of insanity for an offense described in subdivision (a)  
3 of Section 296, or as a condition of a plea.

4 The Department of Justice is not required to destroy analytical  
5 data or other items obtained from a blood specimen or saliva, or  
6 buccal swab sample, if evidence relating to another person subject  
7 to the provisions of this chapter would thereby be destroyed or  
8 otherwise compromised.

9 Any identification, warrant, probable cause to arrest, or arrest  
10 based upon a databank or database match is not invalidated due  
11 to a failure to expunge or a delay in expunging records.

12 (e) Notwithstanding any other law, the Department of Justice  
13 DNA Laboratory is not required to expunge DNA profile or  
14 forensic identification information or destroy or return specimens,  
15 samples, or print impressions taken pursuant to this section if the  
16 duty to register under Section 290 or 457.1 is terminated.

17 (f) Notwithstanding any other law, including Sections 17,  
18 1170.18, 1203.4, and 1203.4a, a judge is not authorized to relieve  
19 a person of the separate administrative duty to provide specimens,  
20 samples, or print impressions required by this chapter if a person  
21 has been found guilty or was adjudicated a ward of the court by a  
22 trier of fact of a qualifying offense as defined in subdivision (a)  
23 of Section 296, or was found not guilty by reason of insanity or  
24 pleads no contest to a qualifying offense as defined in subdivision  
25 (a) of Section 296.

26 (g) This section shall only become operative if the California  
27 Supreme Court rules to uphold the California Court of Appeal  
28 decision in *People v. Buza* (2014) 231 Cal.App.4th 1446 in regard  
29 to the provisions of Section 299 of the Penal Code, as amended  
30 by Section 9 of the DNA Fingerprint, Unsolved Crime and  
31 Innocence Protection Act, Proposition 69, approved by the voters  
32 at the November 2, 2004, statewide general election, in which case  
33 this section shall become operative immediately upon that ruling  
34 becoming final.